IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 283 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF DECEASED NARENDRAKUMAR BHAGVANJI
Versus
HEIRS OF DECEASED VELJI KACHRABHAI

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Appearance :
MR JR NANAVATI for the applicant
MR SURESH M SHAH for the opponents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/03/2006

ORAL JUDGMENT

The petitioners are the original defendants against whom respondents herein instituted a suit being Regular Civil Suit No.662 of 1977 before the learned Civil Judge (Junior Division),

Jamnagar for getting the decree for possession of the suit premises. The case of the plaintiff in the aforesaid suit is that the defendants have acquired alternative suitable accommodation in Kaji Chakla as they have purchased a new house there. After purchasing the said house, the defendants have also started residing there and that the suit premises have been closed for the last more than six months. It is also the case of the plaintiff that the defendants have sublet one room to one Shri K.M. Mehta. On the aforesaid ground, the suit for possession was instituted by the plaintiff against the defendants. The defendants denied the said suit by filing written statement Exhibit 16.

The trial Court framed various issues at page 17 and after recording the evidence and after hearing the advocates for the parties came to the conclusion that the plaintiff has failed to prove that the defendants have acquired the alternative accommodation. The trial Court also negatived the claim of the plaintiff for possession on the ground of subletting. Being aggrieved by the said judgment and order of the trial Court, the original plaintiff preferred an appeal being Civil Regular Appeal No.111 of 1983 before the District Court at Jamnagar. The said appeal was heard by the Assistant Judge, Jamnagar, who, by his judgment and order dated 19.1.1990 allowed the same. The appellate Court found that the tenant has acquired adequate alternative accommodation and on that ground the suit for possession was decreed by the trial Court. Against the aforesaid judgment and decree of the appellate Court, the petitioner original defendants have preferred this revision application by invoking Section 29(2) of the Bombay Rent Act.

The question about suitable alternative accommodation is considered by the appellate Judge in paragraph No.9 of the judgment. It has been found by the appellate Court that the defendants have purchased a new premises, which is suitable for the tenant himself and his family. The appellate Judge has found that there is an admission on the part of the defendants in deposition of one of the defendants at Exhibit 16 about purchase of new premises. The original tenant was one Bhagvanji Vithalji and since he has died on 18.10.1977, the suit was filed against his heirs. The plaintiff has stated in his evidence that the defendants have purchased the new premise at Kazi Chakla at Jamnagar for Rs.40,000/-. The plaintiff has stated in his evidence that the new premises consists of 3 floors and it is a three-storied building. The defendants have in fact shifted to new premises. However, according to the defendants, since the said premises was not suitable, the same was sold to one Vithaljibhai Jamnadasbhai. The Appellate Judge has found that in view of this admission on the part of the defendants, it can be said that the defendants have acquired the alternative accommodation at Kazi Chakla, Jamnagar. The sale deed is also produced on record at Exhibit 33. The Appellate Judge has rightly found that the area acquired by the defendants by way of alternative accommodation is bigger than the tenanted premises. However, the stand taken by the defendants is that the newly acquired premises was unholy and degenerated premises and, therefore, the defendants could not adjust in the new premises and that is how they have vacated the said premises. The say of the defendants is that there was a ghost in the aforesaid premises, which was purchased by them and, therefore, they could not adjust in the

new premises and therefore the same was disposed of.

In my view, when the defendants have in fact already shifted to the new premises, they were duty bound to hand over the possession of the rented premises to the plaintiff. The action of the defendants in not handing over the possession of the tenanted premises in spite of acquiring their own premises is nothing but abuse of provisions of the Bombay Rent Act. The newly acquired premises consists of three floors and it was a three-storied building. The said fact, as such, is not in dispute. The Appellate Judge has also observed in his judgment that there is an admission in the evidence of the defendants that all the family members of the defendants had gone to reside in the new premises and they resided there for about one year. It has come in the evidence that the defendants have also made some new construction in the newly purchased premises, namely, one kitchen room in the ground floor and one room in the terrace and the premises was sufficient to accommodate all the family members of the defendants. The Appellate Judge has specifically found that the defendants have shifted to the new premises. The Appellate Judge has also found that the defendants have not stated anything as to on which date they have purchased the new house. The Appellate Judge has also found at page No.20 of his judgment that the defendants had purchased the new house on 28.4.1976 and they sold it on 9.4.1980. It is found that the said house remained with defendants for about 4 years. The Appellate Judge has also found that the premises was even kept vacant for one year and, therefore, even under Section 13(1)(k) of the Bombay Rent Act a decree can be passed on the ground of non-user. The

appellate Judge has also stated that the fact of presence ghost in the new premises is not stated by the defendant in the written statement. The Appellate Judge has observed that it is not stated in the written statement that there was a ghost in the house. Considering the aforesaid aspects of the matter, in my view, it cannot be said that the appellate Court has committed an error of law in coming to the conclusion that the defendants have acquired suitable alternative accommodation. The Appellate Court has also rightly found that the so called story about presence of ghost is not pleaded in the written statement and even otherwise in order to find out the suitability of the alternative accommodation, the theory of presence of ghost can never be taken into account by the Court for coming to the conclusion that the alternative accommodation is not suitable as there is a presence of ghost in the alternative premises. No judicial notice can be taken on this aspect. In that view of the matter, when it is an admitted fact that the defendants had purchased alternative suitable accommodation and they have shifted to the new place, the decree for eviction is required to be passed under Section 13(1)(l) of the Bombay Rent Act and, therefore, the Appellate Judge has rightly allowed the appeal by decreeing the suit on the aforesaid ground.

It cannot be said that the alternative accommodation is not just and proper because of the presence of the ghost especially when the defendants have even shifted and had incurred expenditure in developing the said property and remained at the said place for a long time. The subsequent conduct after filing of the suit regarding sale of the said premises cannot save the defendants from the decree for

possession on the ground of alternative accommodation as provided under Section 13(1)(l) of the Bombay Rent Act. Considering all these aspects, the decree of the appellate Court under Section 13(1)(l) of the Bombay Rent Act is hereby confirmed and it cannot be said that the order of the appellate Court suffers from any error of law, which requires interference of this Court in its revisional jurisdiction. In view of what is stated hereinabove, there is no substance in the revision application and hence the same is dismissed. Interim relief granted earlier is vacated.

At this stage, Mr Nanavati submitted that some time may be given to the petitioners to vacate the suit premises. Learned advocate for the respondents, Mr Shah submitted that he has no objection if some reasonable time is given. Considering the facts and circumstances of the case, the petitioners are given time to vacate the suit premises up to 31st December 2006 provided that the petitioners shall file a joint undertaking before this Court stating that they will handover the vacant and peaceful possession of the property to the respondents on or before 31st December 2006 and in the meanwhile they will continue to pay regular mesne profits. It should also be provided in the undertaking that they will not transfer, alienate the suit premises to anyone in any manner and will hand over the vacant and peaceful possession of the suit premises by the aforesaid date. Such undertaking is to be filed within a period of one month from today. However, if the undertaking is not filed within the aforesaid time limit, it will be open for the respondent to execute the decree after a period of one month from today.

(P.B.Majmudar, J.)

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